

D.T.E. 03-117-A (Phase II)

September 9, 2004

Petition of Boston Edison Company d/b/a NSTAR Electric for approval of its 2003 Transition Charge True-Up, pursuant to G.L. c.164, § 1A(a), 220 C.M.R. § 11.03(4) and the Restructuring Settlement Agreement approved by the Department of Telecommunications and Energy in D.P.U./D.T.E. 96-23.

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FOR: BOSTON EDISON COMPANY
Petitioner

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I. INTRODUCTION

On December 1, 2003, pursuant to G.L. c. 164, § 1A(a), 220 C.M.R. § 11.03(4) and the Restructuring Settlement Agreement approved in Boston Edison Company, D.P.U./D.T.E. 96-23 (1998) (“Restructuring Plan”), Boston Edison Company d/b/a NSTAR Electric (“BECo” or “Company”) filed with the Department of Telecommunications and Energy (“Department”) a Reconciliation Filing (“Filing”). The Filing included a reconciliation of 2003 transition, transmission, standard offer and default service costs and revenues, as well as proposed updated charges and tariffs to be effective January 1, 2004. The Filing also proposed a redesign of distribution rates for the Company’s rate classes. The Department docketed the Filing as D.T.E. 03-117.¹ On January 6, 2004, the Department approved the revised Filing and proposed tariffs, subject to reconciliation pursuant to the Department’s ongoing investigation in this proceeding. Boston Edison Company, D.T.E. 03-117-A at 2-3 (2004).

On February 12, 2004, pursuant to notice issued, the Department conducted a public hearing and procedural conference. On March 1, 2004, the Company filed supplemental testimony and exhibits (“Supplemental Filing”), which provides actual data through December 31, 2003. On March 25, 2004, the Attorney General filed a notice of intervention pursuant to G.L. c. 12, § 11E. On August 9, 2004, the Department granted the joint motion of the Company and Attorney General to defer evidentiary hearings in order to file a

¹ On December 30, 2003, the Department rejected the rate redesign proposal. Boston Edison Company, D.T.E. 03-117 (2003). On January 5, 2004, the Company revised its Filing along with the proposed charges and tariffs to comply with the Department’s directives.

Settlement on August 10, 2004.² On August 10, 2004, the Company and Attorney General (together, “Settling Parties”) filed: (1) a Joint Motion for Approval of Settlement Agreement (“Joint Motion”); and (2) a Settlement Agreement (“Settlement”) that purported to resolve all issues related to this proceeding.³ No comments were filed on the Settlement.

II. THE SETTLEMENT

The Settlement states that it resolves all issues relating to the reconciliation of costs and revenues for the calendar year 2003 (“reconciliation period”) (Settlement at 2, § 1.5; Joint Motion at 1). The Settlement establishes a reconciliation of costs and revenues for the reconciliation period (Settlement at 2, § 2.1; Exhs. BEC-JFL-1 (Settlement); BEC-JFL-2 (Settlement)).

The Settlement provides that BECo’s payment in lieu of property taxes for 2003 to the Town of Plymouth is adjusted by \$4.68 million to reflect actual payments (Settlement at 2-3, § 2.2 (a); Exhs. BEC-JFL-1 (Settlement) at 4, Column I; BEC-JFL-1 (Settlement) at 1,

² The Department granted previous joint motions to defer evidentiary hearings on August 2, July 9, and April 29, 2004. Evidentiary hearings were scheduled to commence August 10, 2004.

³ The Joint Motion also requests that the Department enter into evidence: (1) 25 Company exhibits; (2) two Settlement exhibits; (3) 37 Company responses to Department information requests; and (4) 26 responses to Attorney General information requests (Joint Motion at 1; Settlement App. A). The Department grants this motion. In addition, the Department incorporates by reference into this proceeding BECo’s Restructuring Settlement Agreement approved in Boston Edison Company, D.P.U./D.T.E. 96-23 (1998). 220 C.M.R. § 1.10(3). The Department also, on its own motion, enters into the record the Company’s response to IR-DTE-3-1.

Column F; BEC-JFL-2 (Settlement) at 1, Column C).⁴ The Settlement also provides that the United States Department of Energy (“DOE”) spent nuclear fuel litigation expenses, as set forth in Exhibit BEC-JFL-2 (Settlement) at 7, includes a notation that \$45,000 of the Pilgrim Contract Customer Share is being deferred and is subject to collection as a transition cost in the event BECo does not receive compensation from DOE (Settlement at 3, ¶ 2.2(b)).⁵

In addition, the Settlement states that, other than where expressly stated, the Settlement: (1) shall not constitute an admission by any party that any allegation or contention in this proceeding is true or false; and (2) shall not in any respect constitute a determination by the Department as to the merits of any issue raised during the proceedings (*id.* at 3-4, § 3.1). The Settlement also states that it establishes no principles and, except as to those issues resolved by approval of this Settlement, shall not foreclose any party from making any contention in any future proceedings (*id.* at 4, § 3.2).

⁴ The Settlement states that BECo’s 2003 actual payment in lieu of property tax to the Town of Plymouth was \$10.136 million (Exh. BEC-JFL-2 (Settlement) at 1, Column A). This is the same amount shown in the Company’s initial filing (Exh. BEC-JFL-2, at 1, Column A). However, in its Supplemental Filing dated March 1, 2004, BECo stated that its 2003 actual payment in lieu of property tax was \$14.816 million, or \$4.68 million higher than the initially-filed amount and the amount indicated in the Settlement (Exhs. BEC-JFL-2 (Supp.) at 1; BEC-JFL-2, at 1). The Company explained that this was caused by a data-entry error when data was being updated in its Supplemental Filing, and that this error was limited only to the Supplemental Filing (Exh. DTE-3-1).

⁵ BECo explained that the Company incurred litigation expenses through 2003 in its pursuit of damages against DOE for breach of contract caused by DOE’s failure to meet its obligations under the Nuclear Waste Policy Act of 1982, and its contract with BECo to remove and dispose of spent nuclear fuel and high-level nuclear waste at the Pilgrim Nuclear Power Station (Exh. BEC-JFL (Supp.) at 2; BEC-JFL-2 (Supp.) at 7).

The Settlement provides that the Settling Parties agree that the content of Settlement negotiations (including work papers and documents produced in connection with the Settlement) are confidential (id. at 4, § 3.3). The Settlement also states that all offers of settlement are without prejudice to the position of any party or participant presenting such offer or participating in such discussion (id.). The Settlement provides that the content of Settlement negotiations are not to be used in any manner with these or other proceedings involving Settling Parties to this Settlement (id.).

Should the Department not approve the Settlement in its entirety by September 9, 2004, the Settlement provides that it shall be deemed withdrawn and not constitute any part of the record in this proceeding or be used for any other purpose (id. at 4, § 3.5).

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department reviews the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with applicable law, including relevant provisions of the Restructuring Act, Department precedent, and the public interest. Boston Edison Company, D.P.U./D.T.E. 96-23, at 13 (1998); Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U. 96-50, at 7 (Phase I) (1996). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

IV. ANALYSIS AND FINDINGS

Upon review of the entire record in this proceeding, the Department finds that, on balance, the Settlement represents a reasonable resolution of the issues in this proceeding. The Department finds that the Settlement's method of reconciling costs and revenues is consistent with the Restructuring Plan and Department precedent. Moreover, the Settlement's method of reconciling costs and revenues substantially complies with the Restructuring Act and is in the public interest. Therefore, the Department approves the Settlement.⁶

⁶ The Department notes the Settlement's confidentiality provision set out at § 3.3 does not bind the Department or preclude its inquiry as events may warrant. To the extent that the parties intend the assertion of confidentiality to be a motion for protective treatment, it is premature.

V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the Joint Motion to Approve an Offer of Settlement and Settlement Agreement, submitted by Boston Edison Company and the Attorney General on August 10, 2004, be and hereby is ALLOWED.

By Order of the Department,

_____/s/
Paul G. Afonso, Chairman

_____/s/
W. Robert Keating, Commissioner

_____/s/
Eugene J. Sullivan, Jr., Commissioner

_____/s/
Deirdre Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).